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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

TYREE RAYBON RUFFINS,

Defendant and Appellant.

B297264

(Los Angeles County
Super. Ct. No. TA147122)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Teresa P. Magno, Judge. Affirmed.

William L. Heyman, under appointment by the Court of
Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief
Assistant Attorney General, Susan Sullivan Pithey, Assistant
Attorney General, David E. Madeo and Kathy S. Pomerantz,
Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Tyree Raybon Ruffins was convicted of carjacking and simple assault. He admitted suffering two prior felony convictions. In this appeal, defendant argues that the trial court abused its discretion in imposing the upper term sentence of nine years for the carjacking conviction because the trial court did not consider purported mitigating factors, including defendant's drug use, the trend toward more lenient sentencing as demonstrated by various voter propositions and legislation regarding sentencing enhancements, and the road rage preceding the carjacking. The record demonstrates that the trial court considered defendant's evidence in mitigation, as well as the multiple aggravating factors, including an escalating criminal history and defendant's failures to complete post release community supervision, each of which independently supported the trial court's decision to impose the upper term sentence. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Amended Information*

In an amended information, defendant was charged with one count of carjacking and one count of assault by means of force likely to cause great bodily injury. It was alleged that defendant suffered two prior convictions within the meaning of Penal Code¹ section 667.5, subdivision (b) and did not remain free of prison custody for a five-year period.

¹ Undesignated statutory citations are to the Penal Code.

2. *Jury Trial*

Three witnesses testified for the prosecution during defendant's jury trial. No witness testified for the defense.

a. JMG's testimony

On September 20, 2018, JMG and his wife LM were driving in the City of Compton in a green Ford Mustang. Defendant, who was riding a bicycle, cut in front of JMG, who was stopping at a red light. JMG yelled at defendant saying, "Hey, what the fuck [are] you doing?" JMG did not say anything else to defendant.

Defendant approached JMG's driver-side window, which was mostly open, and punched JMG through the window. Defendant hit the left side of JMG's forehead. JMG exited his car to fight defendant, but JMG was unable to fight because he was dizzy from defendant's punch.

JMG did not hit defendant. JMG tried to kick defendant but was unable to contact him. JMG fell.

Defendant hit JMG three times. JMG felt pain; he bled from one or more of defendant's punches, and later suffered headaches. After defendant hit JMG, defendant drove away in JMG's car. JMG tried to stop defendant from taking the car, but defendant pushed him away with enough force to cause JMG to "go flying."

JMG was unaware that he was required to share the road with bicyclists. JMG did not go to the hospital the day of the incident.

b. LM's testimony

On September 20, 2018, LM and her husband, JMG, were driving in the City of Compton. Defendant, who was riding a

bicycle, cut in front of JMG. JMG yelled, “What the fuck were you doing.” JMG did not say anything else to defendant.² Defendant rode his bike up to the car and punched JMG through the window. JMG exited the vehicle and fought with defendant. LM told JMG to get back in the car so that they could leave the scene.

Defendant ran and jumped in the car. LM quickly retrieved her purse from the car, and when she “yanked” her purse, she lost her balance and fell. LM observed defendant “drag[]” JMG and “drop[]” him in the middle of the street before driving away.

c. Detective Sarah Schneider’s testimony

On September 21, 2018, Detective Sarah Schneider observed defendant sitting in a green Ford Mustang that belonged to JMG. When Detective Schneider approached, defendant started to run. Another officer found defendant hiding underneath a vehicle. Defendant’s left hand was injured.

3. *Defense Counsel’s Argument*

Defense counsel emphasized the instruction on proof beyond a reasonable doubt. Counsel argued that JMG was wrong to yell at defendant with whom JMG was required to share the road. Counsel argued that JMG was wrong to get out of his car. Counsel further contended defendant did not have the intent to take JMG’s vehicle and that JMG was not afraid of defendant. “There’s no intent to take the vehicle. It was a theft, but it was not a carjacking. It was an escalation, but nowhere is there

² LM inconsistently testified that there was “a lot of back-talk between the two of them,” meaning defendant and JMG.

specific intent to take that vehicle. It was two men; fought; one lost; angry; drove away.” Counsel argued that there was mutual combat; defendant was not the aggressor. Counsel told the jury JMG “exited his vehicle. He advanced first. He started this. He could have driven away and not let it escalate. He chose not to [drive away].”

4. *Verdict*

Jurors found defendant guilty of carjacking and of simple assault, a misdemeanor. Defendant waived jury trial on the priors and, subsequently, admitted that he suffered a prior conviction for violation of Penal Code section 273.5 (willful infliction of corporal injury on a spouse or cohabitant) and a prior conviction for violating Health and Safety Code section 11351 (possession or purchase for sale of a controlled substance).

5. *Probation Report*

The probation report shows that in 2011, defendant was convicted of misdemeanor theft. In 2012, defendant was convicted of possession of a controlled substance. Also in 2012, defendant was convicted of misdemeanor assault. In 2013, defendant was convicted of corporal injury to a spouse or cohabitant. In 2014, defendant was convicted of misdemeanor contempt. In 2016, defendant was convicted of misdemeanor child cruelty. At the time defendant committed the current offenses he was participating in active post release community supervision.

6. *Sentencing Memoranda*

In its sentencing memorandum, the People indicated that defendant faced a maximum sentence of 10 years 6 months. The

People requested that the court impose a nine-year sentence. The prosecutor argued that there were several aggravating circumstances.

In response, defense counsel argued that the mitigating factors militated in favor of awarding defendant probation. Counsel emphasized that even though JMG could have driven away, he stayed to fight defendant. Counsel argued: “These were crimes that were a result of road rage that escalated because no one was willing to walk away. The actions are not those of a sophisticated criminal.” Counsel pointed out that defendant was 26 years old and had a six-year-old daughter. Counsel indicated that defendant suffered from a “drug problem” and requested a drug rehabilitation program in lieu of state prison.

A letter written by defendant’s mother attached to defendant’s sentencing memorandum provided: “Tyree is a follower[. H]is peers introduced him to that fast life, the meth-Weed [*sic*] and gang life. My husband and I try to help Tyree as much as we could. As soon as he got on the drugs he went to a dark place. I am begging the court that Tyree be enrolled in Drug Rehabilitation Program. . . . In prison he will not get any coping skills regarding his drug problem.”

7. After a Hearing, the Court Sentences Defendant to the High Term for Carjacking

At a sentencing hearing, the trial court indicated it had read the probation officer’s report. The court stated it had read and considered the parties’ sentencing memoranda, including the letter from defendant’s mother. The court also acknowledged that the maximum possible sentence was 10 years 6 months, and defense counsel agreed. In mitigation, the court noted that

defendant “may have suffered a mental or physical condition that somehow led to his poor decision-making.” The court indicated that there were several factors in aggravation: defendant’s criminal history, showing crimes of increasing seriousness; and prior unsuccessful grants of probation and parole. The court stated: “I find it very disturbing that this offense was committed during a grant of parole.” The court also noted that the victims were elderly, and LM used a walker. These are all aggravating factors under California Rules of Court, rule 4.421.³

³ California Rules of Court, rule 4.421 describes circumstances in aggravation and provides:

“(a) Factors relating to the crime

Factors relating to the crime, whether or not charged or chargeable as enhancements include that:

“(1) The crime involved great violence, great bodily harm, threat of great bodily harm, or other acts disclosing a high degree of cruelty, viciousness, or callousness;

“(2) The defendant was armed with or used a weapon at the time of the commission of the crime;

“(3) The victim was particularly vulnerable;

“(4) The defendant induced others to participate in the commission of the crime or occupied a position of leadership or dominance of other participants in its commission;

“(5) The defendant induced a minor to commit or assist in the commission of the crime;

“(6) The defendant threatened witnesses, unlawfully prevented or dissuaded witnesses from testifying, suborned perjury, or in any other way illegally interfered with the judicial process;

“(7) The defendant was convicted of other crimes for which consecutive sentences could have been imposed but for which concurrent sentences are being imposed;

“(8) The manner in which the crime was carried out indicates planning, sophistication, or professionalism;

“(9) The crime involved an attempted or actual taking or damage of great monetary value;

“(10) The crime involved a large quantity of contraband; and

“(11) The defendant took advantage of a position of trust or confidence to commit the offense.

“(12) The crime constitutes a hate crime under section 422.55 and:

“(A) No hate crime enhancements under section 422.75 are imposed; and

“(B) The crime is not subject to sentencing under section 1170.8.

“(b) Factors relating to the defendant

“Factors relating to the defendant include that:

“(1) The defendant has engaged in violent conduct that indicates a serious danger to society;

“(2) The defendant’s prior convictions as an adult or sustained petitions in juvenile delinquency proceedings are numerous or of increasing seriousness;

“(3) The defendant has served a prior term in prison or county jail under section 1170(h);

“(4) The defendant was on probation, mandatory supervision, postrelease community supervision, or parole when the crime was committed; and

Defense counsel argued that the criminal justice system is changing and that the court should consider defendant's reentry into society and the fact that he needed help with his drug addiction. Defense counsel requested the trial court order defendant to participate in residential treatment for drug addiction. Counsel argued that the carjacking in this case was not as serious as more typical carjackings. Indeed, counsel represented imposing the upper term would be "far excessive and it's almost punitive at this point."

Defendant's mother addressed the court and described defendant's use of controlled substances. Defendant's mother stated, "I'm begging, I'm pleading, I'm praying that he be given a substance abuse program." Defendant's father stated that when defendant was under the influence of a controlled substance, he was not "his right self." Defendant's brother also spoke on defendant's behalf.

The court acknowledged that it had to consider not only what was best for the defendant, but "also the rights of the victims, the rights of society. And if I were to grant your request for probation, I'm doing so by disregarding all the other rights that I've been tasked to be responsible for." The court stated that "for carjacking, I have to pick between a low term, midterm, and high term. And that's dictated by statute." The court stated:

"(5) The defendant's prior performance on probation, mandatory supervision, postrelease community supervision, or parole was unsatisfactory.

"(c) Other factors

"Any other factors statutorily declared to be circumstances in aggravation or that reasonably relate to the defendant or the circumstances under which the crime was committed."

“I do believe, based upon my analysis involved, the evidence of everything that I heard, that the nine-year state prison sentence will be the just sentence in this matter.”

Against his lawyer’s advice, defendant addressed the court stating that he had been “just straight-out crazy because of drug use.” Defendant stated that he entered treatment programs but “I always seem to mess up. I have been trying. It’s not like I’m just a bum on the streets just carjacking people. You know, I’m not starving. As you can see in my history, there’s no real crimes I have really committed. It’s all petty.” Defendant stated that he committed domestic violence “because of drugs” and “everybody get[s] into a domestic”

The trial court sentenced defendant to the upper term of nine years on the carjacking. The court ordered the section 667.5, subdivision (b) priors stricken. The court ordered defendant serve six months for the simple assault but further ordered that sentence stayed upon completion of the nine-year sentence imposed for the carjacking. Defendant timely appealed from the judgment.

DISCUSSION

Defendant argues that the trial court abused its discretion in imposing the upper term for carjacking, and was required instead to impose the middle term. Defendant recognizes that “ ‘[a] trial court’s decision to impose a particular sentence is reviewed for abuse of discretion and will not be disturbed on appeal ‘unless its decision is so irrational or arbitrary that no reasonable person could agree with it.’ ” (*People v. Nicolas* (2017) 8 Cal.App.5th 1165, 1182.) Additionally, “ ‘[o]nly a single aggravating factor is necessary to make it lawful for the trial court to impose’ the upper term.” (*Ibid.*)

In exercising its discretion to select the appropriate sentence, the sentencing judge may consider aggravating and mitigating circumstances.⁴ (Cal. Rules of Court, rule 4.420(b).)

⁴ California Rules of Court, rule 4.423 describes the circumstances in mitigation as follows:

“(a) Factors relating to the crime

“Factors relating to the crime include that:

“(1) The defendant was a passive participant or played a minor role in the crime;

“(2) The victim was an initiator of, willing participant in, or aggressor or provoker of the incident;

“(3) The crime was committed because of an unusual circumstance, such as great provocation, that is unlikely to recur;

“(4) The defendant participated in the crime under circumstances of coercion or duress, or the criminal conduct was partially excusable for some other reason not amounting to a defense;

“(5) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime;

“(6) The defendant exercised caution to avoid harm to persons or damage to property, or the amounts of money or property taken were deliberately small, or no harm was done or threatened against the victim;

“(7) The defendant believed that he or she had a claim or right to the property taken, or for other reasons mistakenly believed that the conduct was legal;

“(8) The defendant was motivated by a desire to provide necessities for his or her family or self; and

“(9) The defendant suffered from repeated or continuous physical, sexual, or psychological abuse inflicted

Defendant argues that the court abused its discretion because it considered only one factor in mitigation—defendant’s mental or physical condition that could lead to poor decision making. According to defendant, the trial court should have considered

by the victim of the crime, and the victim of the crime, who inflicted the abuse, was the defendant’s spouse, intimate cohabitant, or parent of the defendant’s child; and the abuse does not amount to a defense.

“(b) Factors relating to the defendant

“Factors relating to the defendant include that:

“(1) The defendant has no prior record, or has an insignificant record of criminal conduct, considering the recency and frequency of prior crimes;

“(2) The defendant was suffering from a mental or physical condition that significantly reduced culpability for the crime;

“(3) The defendant voluntarily acknowledged wrongdoing before arrest or at an early stage of the criminal process;

“(4) The defendant is ineligible for probation and but for that ineligibility would have been granted probation;

“(5) The defendant made restitution to the victim; and

“(6) The defendant’s prior performance on probation, mandatory supervision, postrelease community supervision, or parole was satisfactory.

“(c) Other factors

“Any other factors statutorily declared to be circumstances in mitigation or that reasonably relate to the defendant or the circumstances under which the crime was committed.”

the following other factors mitigating his crime: (1) JMG initiated the conflict when he yelled at defendant; (2) if JMG “had minded his own business, the incident would not have happened”; (3) JMG did not need to exit the car after defendant hit him and if JMG had not exited the car, “the carjacking presumably would not have happened; (4) defendant acted on “sudden impulse” and did not plan the carjacking; (5) defendant did not target elderly persons but responded to JMG’s statements; (6) defendant’s “dependence on drugs [may have] influenced his behavior during the incident;” and (7) the state no longer “favor[s] . . . heavy sentences . . . and the trial court should have taken that into account in sentencing” defendant.

Defendant’s argument is particularly unpersuasive in this case in which the trial court carefully explained its decision to impose the high term after recognizing its discretion. Most of the so-called mitigation factors defendant emphasizes are based on JMG’s conduct, not defendant’s conduct. Contrary to defendant’s argument, the trial court was not required to conclude that JMG’s conduct mitigated the carjacking. Defendant chose forcibly to push JMG away from the car and drive away in JMG’s car. Although defendant may not have initially targeted JMG because he was elderly, defendant observed and fought with JMG prior to driving away in JMG’s car and dragging JMG on the road. Defendant also ignores the multiple aggravating factors present in this case, including his criminal history and failures to complete post release community supervision, any one of which was sufficient to support imposing the upper term.

In addition to emphasizing JMG’s conduct, defendant argues that he acted on sudden impulse when he entered JMG’s car and drove off in it. Defendant does not link this fact to any

factor in mitigation. Moreover, jurors rejected defense counsel's argument that the elements of carjacking were not established, and the trial court found unpersuasive defense counsel's argument made at the sentencing hearing that defendant's carjacking was less serious than other carjackings. Once again, defendant ignores the multiple aggravating factors, which the trial court expressly found persuasive. It bears repeating that any one of those aggravating factors was sufficient to support the upper term sentence.

Next, defendant emphasizes his drug use. The trial court considered defendant's drug use and found it to be a mitigating factor. The trial court, however, concluded it was outweighed by the aggravating factors. Defendant fails to demonstrate this finding was an abuse of discretion.

Finally, defendant's argument about general trends in sentencing does not assist him. It is undisputed that the upper sentence for carjacking is nine years. The fact that sentences for other crimes have been modified does not demonstrate any error in the trial court's exercise of its discretion to sentence defendant to the high term for carjacking in this case. Defendant's trial counsel advanced the same argument in the trial court. In a reasonable exercise of its discretion, the trial court found the argument unpersuasive.

In short, the trial court's decision to sentence defendant to the high term was not arbitrary or capricious. Although a single aggravating factor may support the upper term, this case involved multiple aggravating factors. (*People v. Weber* (2013) 217 Cal.App.4th 1041, 1063.) Further, defendant's own statements showed that he had not learned to reform his conduct. At the sentencing hearing, defendant denied his prior criminal

history stating, “[T]here’s no real crimes I have really committed. It’s all petty.” Defendant stated that “everybody get[s] into a domestic” and that it was “not really serious.”⁵

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

BENDIX, Acting P. J.

We concur:

CHANNEY, J.

SINANIAN, J.*

⁵ The Attorney General’s argument that defendant’s trial counsel forfeited the claim that defendant was entitled to the middle term as opposed to the upper term lacks merit in light of defendant’s counsel’s extensive efforts to request a reduced term both in the sentencing memorandum and at the sentencing hearing. Because we conclude the issue is not forfeited, we need not address defendant’s argument that his trial counsel rendered ineffective assistance of counsel in failing to object to the imposition of the upper term.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.